



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0448-17

WILLIAM RHOMER, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTH COURT OF APPEALS
BEXAR COUNTY**

KEEL, J., delivered the opinion of the Court in which KELLER, P.J., and KEASLER, HERVEY, RICHARDSON, YEARY, NEWELL, and SLAUGHTER, JJ., joined. HERVEY, J., filed a concurring opinion in which KEASLER, RICHARDSON, and NEWELL, JJ., joined. WALKER, J., filed a concurring opinion.

O P I N I O N

A jury convicted Appellant of felony murder for causing the death of another while committing felony driving while intoxicated, and it sentenced him to seventy-five years in prison. The court of appeals affirmed. We granted Appellant's petition for discretionary review to decide whether an accident reconstruction expert can testify about a specific

type of accident reconstruction in which he has no formal training and whether accident reconstruction should be governed by the *Kelly* or *Nenno* test for evaluating the reliability of the expert testimony. *Kelly v. State*, 824 S.W.2d 568 (Tex. Crim. App. 1992); *Nenno v. State*, 970 S.W.2d 549, 560 (Tex. Crim. App. 1998), *overruled on other grounds by State v. Terrazas*, 4 S.W.3d 720 (Tex. Crim. App. 1999). We affirm the judgment of the court of appeals.

I. Background

A. Relevant Facts

i. The Accident

Appellant left a bar shortly before 3:00 a.m. and drove his car eastbound on Nakoma Drive. The decedent, Gilbert Chavez, was riding his motorcycle in the westbound lane of Nakoma Drive. As both Appellant and Chavez approached the intersection of Nakoma Drive and Colwick Street from opposite directions, the vehicles collided. Mario Negron and Kenneth Ferrer testified that they were driving in the westbound lane of Nakoma Drive around 3:00 a.m. when they came upon the accident. Both testified to driving through the debris of the accident.

Negron and Ferrer saw Chavez was badly injured and lying near his motorcycle, and they called for help. They saw Appellant at the scene stumbling near his car which had crashed into a building. When police officers arrived, Appellant told them that Chavez had driven into his lane of traffic; he later told one of the officers that Chavez had

pulled out in front of him as if Chavez had been traveling in the same direction as Appellant and had hit Appellant on the right side.

Chavez was taken to the hospital where he later died from his injuries. Dr. Randy Frost, the Bexar County Chief Medical Examiner, testified the injuries were consistent with an automobile accident, and multiple traumatic blunt force injuries were the cause of death.

ii. Detective Doyle's Testimony

Detective John Doyle was assigned to the San Antonio Police Department's Traffic Investigation Detail. In his twenty-three years as a police officer, he had investigated at least a thousand vehicular crashes and had testified once as an accident reconstruction expert in a case that involved two cars and a pickup truck. To qualify for his position in SAPD's Traffic Investigation Detail, Doyle attended three courses related to vehicle collisions. Doyle learned the basics of crash investigation – including “skid to stop” formulas, diagram drawing and scene measurement – in an intermediate crash investigation course. He later attended an advanced course at Texas A&M University where he learned how to conduct an “energy analysis” to calculate speed. Doyle also took a reconstruction course and courses on accidents involving pedestrians and bicycles. He testified that his accident reconstruction course work totaled 501 hours.

Doyle never took a course specifically related to motorcycle accident reconstruction and testified that he did not know of one offered in Texas. He admitted that there are

“different physics, different science, [and] different mathematical principles” when evaluating a crash that involves two cars versus a crash that involves a car and a motorcycle. He testified, however, that the differences typically have to do with speed calculations and that the “basic facts” of an accident are still the same.

At the accident scene, Doyle observed Appellant’s car crashed into a building and Chavez’s motorcycle lying in the adjacent parking lot. Doyle did a visual inspection of the debris, tire marks and vehicular damage. He then used a precision surveying tool, a Sokkia instrument, to map the locations of the vehicles, debris, curb strikes and scrapes, and the dimensions and curvature of the road. Using these measurements, Doyle created a diagram of the accident that showed the spacial relationship between all of the pieces of evidence at the scene of the accident. Doyle could not calculate the speed of the vehicles at the time of the collision due to the huge weight differential between the car and the motorcycle and due to Appellant’s car having crashed into a building without displacing it.

Detective Doyle observed a debris field in the westbound lane of Nakoma Drive that included pieces of Chavez’s motorcycle. The debris was in front of the area of impact because the momentum of the debris carried it in the direction in which the motorcycle was traveling at the time of impact. There was no debris in Appellant’s lane. There was no pre-impact braking by either the motorcycle or the car. There were three curb strikes and two scrape marks between the resting place of the motorcycle and the

resting place of the car. Appellant's car sustained damage on its front left corner because the motorcycle struck the car's wheel well. Part of Appellant's front bumper was lodged in the cooling fins on the left side of Chavez's motorcycle.

On impact the motorcycle and Chavez "took two different paths" with the motorcycle pushed up and backwards while Chavez went over and beside the car, flinging bodily tissue onto it from the gaping wound in his leg and leaving a trail of hand prints in the dust on the car.

Doyle formed the opinion that the wreck was "more or less" a head-on collision:

Basically that the vehicle driven by the defendant straightened out the cur[ve], hit the motorcycle in the – his traffic lane, in the oncoming traffic lane. The motorcyclist was struck by the left front corner of the car. He went over the car and the vehicle was – motorcycle was pushed backwards into the parking lot. The vehicle continued on in its same direction resulting in ultimately the death of the complainant.

Appellant's failure to negotiate the curve was consistent with alcohol impairment.

Doyle testified, "That's one of the very, very common factors in alcohol-related crashes is failing to negotiate a curve, basically straightening out a curve, very common." He concluded that Appellant caused the crash due to alcohol intoxication. He dismissed Appellant's alternative, on-scene claims that Chavez came up from behind him and hit him on his right or crossed into Appellant's lane; Doyle found those scenarios to be inconsistent with the physical evidence that he observed.

B. Issues Presented

This Court granted review to resolve three issues raised by Appellant. First, did the court of appeals violate Texas Rule of Evidence 702 in affirming the trial court's decision to admit Doyle's expert testimony though he had no qualifications in motorcycle accident reconstruction? Second, in relying on *Nenno* instead of *Kelly*, did the court of appeals apply the wrong standard when deciding that Doyle's testimony was reliable even though he applied no scientific theory or testing from the field of accident reconstruction and had no qualifications in the field of motorcycle accident reconstruction? Third, should the *Nenno* standard apply when an expert in a technical scientific field chooses not to apply the scientific testing or theory to a particular case? We reject the premises that Doyle had no qualifications and chose to apply no scientific theory or testing. We hold that the trial court did not abuse its discretion in admitting Doyle's expert testimony; the *Nenno* standard was applicable under the circumstances of this case; and Doyle's testimony was reliable. Consequently, we affirm the judgment of the court of appeals.

C. Standard of Review

An appellate court reviews a trial court's ruling on the admission of evidence for an abuse of discretion. *Rodgers v. State*, 205 S.W.3d 525, 527 (Tex. Crim. App. 2006); *Powell v. State*, 63 S.W.3d 435, 438 (Tex. Crim. App. 2001). The trial court abuses its discretion when it acts without reference to any guiding rules and principles or acts

arbitrarily or unreasonably. *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990).

II. Analysis

A. Expert Witness Testimony

An expert witness may offer an opinion if he is qualified to do so by his knowledge, skill, experience, training or education and if scientific, technical or other specialized knowledge will assist the trier of fact in understanding the evidence or determining a fact in issue. TEX. R. EVID. 702. Witnesses who are not experts may testify about their opinions or inferences when those opinions or inferences are rationally based on the perception of the witnesses and helpful to a clear understanding of the witnesses' testimony or the determination of a fact in issue. TEX. R. EVID. 701. There is no distinct line between lay opinion and expert opinion. *Osborn v. State*, 92 S.W.3d 531, 537 (Tex. Crim. App. 2002).

Three requirements must be met before expert testimony can be admitted: "(1) The witness qualifies as an expert by reason of his knowledge, skill, experience, training, or education; (2) the subject matter of the testimony is an appropriate one for expert testimony; and (3) admitting the expert testimony will actually assist the fact-finder in deciding the case." *Vela v. State*, 209 S.W.3d 128, 131 (Tex. Crim. App. 2006). These conditions are commonly referred to as (1) qualification, (2) reliability, and (3) relevance. The first two are in play with respect to Detective Doyle's testimony.

B. Qualification

The specialized knowledge that qualifies a witness to offer an expert opinion may be derived from specialized education, practical experience, a study of technical works or a combination of these things. *Wyatt v. State*, 23 S.W.3d 18, 27 (Tex. Crim. App. 2000). “A witness must first have a sufficient background in a particular field, but a trial judge must then determine whether that background ‘goes to the very matter on which [the witness] is to give an opinion.’” *Vela v. State*, 209 S.W.3d 128, 131 (Tex. Crim. App. 2006), *quoting Broders v. Heise*, 924 S.W.2d 148, 153 (Tex. 1996). “Fit” is a component of qualification, and “the expert’s background must be tailored to the specific area of expertise in which the expert desires to testify.” *Vela*, 209 S.W.3d at 133. The party offering expert testimony has the burden to show the witness is qualified on the matter in question. *Penry v. State*, 903 S.W.2d 715, 762 (Tex. Crim. App. 1995).

To determine whether a trial court has abused its discretion in ruling on an expert’s qualifications, an appellate court may consider three questions: (1) Is the field of expertise complex? (2) How conclusive is the expert’s opinion? (3) How central is the area of expertise to the resolution of the lawsuit? *See Rodgers*, 205 S.W.3d at 528. Greater qualifications are required for more complex fields of expertise and for more conclusive and dispositive opinions. *Id.* The first two *Rodgers*’ factors – complexity and conclusiveness – weigh in favor of less stringent qualification requirements in this case while the third factor – dispositiveness – weighs in favor of higher requirements.

Accident reconstruction may sometimes be complex, but the reconstruction opinion offered by Doyle was not. He did not calculate pre-impact vehicle speeds; he examined the physical evidence in the context of the accident scene to form an opinion about the area of impact and how the collision occurred. His testimony was more akin to latent print comparison than to DNA profiling because it was relatively simple. *See id.* Nor was his testimony very conclusive; he testified that the area of impact was an estimation, not a precise point. According to Doyle, the phrase “point of impact” has fallen out of favor because “it’s never a precise point, and it’s an area of impact.” His opinion was dispositive because there was no other evidence about the central issues of location and cause of the accident. Given that two of the three *Rodgers* factors weigh in favor of upholding the trial court’s ruling on Doyle’s qualifications, we cannot say the trial court abused its discretion in admitting Doyle’s opinions.

Although Doyle had never taken a class that focused on motorcycle-involved crashes, he knew how to analyze an accident scene based on debris, vehicle damage, skid and gouge marks and vehicle resting places, and he had done so hundreds of times. The involvement of a motorcycle in this collision did not interfere with his ability to analyze the physical evidence present at the accident scene, and his background went to the very matter about which he testified.

Appellant argues that Doyle was not qualified to testify as an expert in motorcycle accident reconstruction because he was not trained to conduct speed and energy

calculations for accidents involving motorcycles. But Doyle offered no opinions involving such calculations. According to Doyle, such calculations were impossible because of the weight differential between the car and motorcycle and because the car hit a building that was not displaced. His failure to conduct an impossible speed analysis did not make him unqualified to testify about where and how the crash occurred based on an analysis of the physical evidence at the crash site.

Appellant contends that the use of the Sokkia measuring device and the diagraming of the scene were not scientific methods and that Doyle did not apply any scientific theory in this case. We disagree that measuring and diagraming are not scientific methods. But even if they were not scientific methods, that would not mean that Doyle was unqualified; an expert does not need to use scientific methods to be qualified. *Morris v. State*, 361 S.W.3d 649, 654 (Tex. Crim. App. 2011). An expert is qualified by specialized knowledge, training, or experience. *Wyatt*, 23 S.W.3d at 27. There is no requirement that the expert's specialized knowledge, training or experience be based on scientific principles.

The trial court is supposed to act as a gatekeeper against expert testimony that would not help the trier of fact. This is not the same thing as requiring every expert to be the best possible witness. We agree with the State that the relevant question was not whether Doyle lacked a particular qualification that would have made him the ideal expert witness but whether the qualifications that he did have would have assisted the jury in

determining an issue of fact. We hold that Doyle's qualifications would have assisted the jury in determining issues of fact, namely, where and how the collision happened, and we affirm the court of appeals' decision that the trial court did not abuse its discretion in determining Doyle was qualified to offer an expert opinion on these issues.

C. Reliability

The next issues are whether the expert testimony about accident reconstruction in this case should be evaluated for reliability under *Kelly* or *Nenno* and whether Doyle's testimony was reliable.

When an expert's testimony is based on a hard science involving precise calculations and the scientific method, the expert must satisfy the test set forth in *Kelly*, 824 S.W.2d at 573. *Morris*, 361 S.W.3d at 654. ("When the subject of an expert's testimony is 'scientific knowledge,' then the basis of that testimony must be grounded in the accepted methods and procedures of science."). The *Kelly* test for reliability of evidence derived from a scientific theory requires that: (1) the underlying scientific theory must be valid, (2) the technique applying the theory must be valid, and (3) the technique must have been properly applied on the occasion in question. *Kelly*, 824 S.W.2d at 573.

Nenno set forth a framework for evaluating the reliability of expert testimony in fields of study outside the hard sciences. *Nenno*, 970 S.W.2d at 561. The *Nenno* test asks whether (1) the field of expertise is a legitimate one, (2) the subject matter of the expert's testimony is within the scope of that field, and (3) the expert's testimony properly relies

upon and/or utilizes the principles involved in the field. *Id.* The distinctions between hard and soft sciences may be blurred, and the reliability inquiry is flexible. *Id.* at 560-61.

Appellant argues that this case should be analyzed under *Kelly* because accident reconstruction is a hard science. He also claims that Doyle's testimony would fail the *Kelly* test and even the less stringent *Nenno* test because Doyle did not use the scientific methods and principles that were available to him when he failed to calculate the speed of the vehicles before the collision. We disagree. While a speed calculation might fall under the *Kelly* test, Doyle could not do a speed calculation in this case due to the weight differential between the car and the motorcycle and because the car crashed into a building without displacing it. Under these circumstances, Doyle's failure to conduct a speed calculation was irrelevant to the reliability of his opinions about how and where the collision happened based on the physical evidence he observed at the scene. As the State points out, Doyle used physical evidence to put together a fairly simple jigsaw puzzle.

Judge Walker's concurring opinion cites *Wooten v. State*, 267 S.W.3d 289 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd), and *Pena v. State*, 155 S.W.3d 238 (Tex. App.—El Paso 2004, no pet.), as support for applying the *Kelly* test here. But those cases are distinguishable from this one because they addressed the admissibility of expert testimony about the pre-impact speed of the defendants' vehicles. *Wooten*, 267 S.W.3d at 304; *Pena*, 155 S.W.3d at 246.

We agree with the court of appeals that the *Nenno* test applied to Doyle's testimony because his opinions were based on his training and experience in evaluating physical evidence at crash scenes more than on a hard scientific inquiry such as calculating a vehicle's pre-impact speed. *Rhomer v. State*, 522 S.W.3d 13, 17 (Tex. App. — San Antonio 2017). We conclude that (1) the field of accident reconstruction is a legitimate one, (2) the subject matter of Doyle's expert testimony was within the scope of that field, and (3) his testimony properly relied upon and utilized the principles involved in the field, i.e., examining the physical evidence in the context of the crash site to draw conclusions about the location and cause of the crash.¹

III. Conclusion

Doyle was qualified to testify as an expert in accident reconstruction, and his testimony was reliable. We affirm the judgment of the court of appeals.

Delivered: January 30, 2019
Publish

¹We do not endorse the lower court's holding that Doyle's testimony was reliable "based on his experience and specialized training." *Rhomer*, 522 S.W.3d 13 at 21. Qualification is evaluated by looking at the expert's training and experience. Reliability is evaluated by looking at the method the expert used to come to his conclusions. Doyle's testimony was reliable because it was based on the information he gathered at the scene: the measurements he took, the pictures he captured, the damage he observed, and the diagram he created. He was able to compile and synthesize all of that information thanks to his experience and training, but it was not his experience and training alone that made his testimony reliable.